IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Crl. Appeal No. 1075 of 2001
(Old No. 147/1981)

Date of decision: 15th November 2003

For the approval of:-

Hon'ble Chief Justice S.H. Kapadia.

Hon'ble Mr. Justice Irshad Hussain.

- Whether the order/judgment should be sent to the reporters for reporting? ( )

- Whether the reporters be allowed to see the judgment? (Yes)

(Gurpreet)
P.A.

C.J.'s Court

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Crl. Appeal No. 1075 of 2001
(Old No. 147/1981)

Bhagi Ram, S/o Sri Rami Ram,
Village Doli Patti Doli,
District Pithoragarh. ------ Appellant

Versus

State of U.P. ------ Respondent.

Mr. S.K. Mishra, learned Amicus Curiae for the appellant.
Mr. D.K. Sharma, learned Addl. Govt. Advocate for the State.

Coram: Hon'ble S.H. Kapadia, C.J.
Hon'ble Irshad Hussain, J.

Date: 15th November, 2003:

ORAL JUDGMENT: [Per Hon. Chief Justice]

1. The appellant, Bhagi Ram is aggrieved by judgment and order dated 25th October 1980 passed in Sessions' Trial No. 29 of 1979 by Sessions' Judge, Pithoragarh, convicting him under section 302, I.P.C. He has been awarded life imprisonment. Therefore, he has come by way of appeal to this Court under section 374(2) of the Criminal Procedure Code, 1973.

2. Case of the Prosecution:

Bhagi Ram (Appellant) was the step-son of the deceased Madhvi Devi. His marriage expenses were borne by the deceased, who used to pester him to repay her dues. Bhagi Ram (Appellant) was the son of Rami Ram. The deceased was the second wife of Rami Ram. Kishan Ram (PW3) was the step-brother of Bhagi Ram (Appellant). He was the real son of the deceased. Govind Ram (P.W.5) was the brother of Rami Ram and Uncle of Bhagi Ram (Appellant). Govind Ram (PW5) was the informant. Kuri Devi (PW1) was the sole eye-witness to the incident, which took place on 13th June 1979 at around 10 a.m. in the courtyard to the house of Rami

Ram in village Doli, Police Station Patti Nayadesh, District Pithoragarh. Kuri Devi (PW1) was the sister of Rami Ram, the father of Baghi Ram (Appellant) and consequently, Kuri Devi was the aunty of Bhagi Ram (Appellant).

We have mentioned the relationship between the appellant, PW1, PW3 and PW5 as PW1 & PW5 were declared hostile.

According to the case of the prosecution, on 13th June 1979 at around 10 a.m., Bhagi Ram (Appellant) struck the deceased with an axe in the courtyard of the house of his father, Rami Ram. There was nobody in the house of Rami Ram. Village Doli was the maika of Kuri Devi (PW1). On 13th June 1979 Kuri Devi (PW1) was in her house adjacent to the house of Rami Ram. Bhagi Ram (Appellant) was living separately from the deceased. His own mother had died earlier. His marriage was performed by the deceased, Madhavi Devi. She had incurred marriage expenses. Kuri Devi (PW1) saw Bhagi Ram (Appellant) striking the deceased with an axe. Thereafter, he had fled. Govind Ram (PW5), uncle of Bhagi Ram (Appellant) informed the Patwari Shri Gopi Ram (PW7), who was the I.O. vide Tehrir (part of Ex. Ka. 10). Accordingly, on 13th June 1979 at 4:30 p.m. the chik F.I.R. (Ex. Ka. 10) came to be lodged for offence punishable under section 302 I.P.C. Thereafter, the I.O. Shri Gopi Ram (PW7) attendant village Doli and he appointed the Sabhapati, Gopal Datt (PW2) as the Panch. The I.O. (PW7) then prepared the Inquest Report (Ex. Ka. 1). He, then, collected blood-stained mud & also the plain mud from the courtyard vide Ex. Ka. 2, which was proved by Gopal Datt (PW2). The Inquest Report (Ex. Ka. 1) was prepared by the I.O. on 13th June 1979 between 6:15 p.m. and 7:30 p.m. Bhagi Ram (Appellant) was arrested on 12th June 1979 at 7:20 p.m. at Police Check Out Post at Jhulaghat, which is near Indo-Nepal border, by two police constables of that outpost. They were police constables Chattur Singh and Siya Ram. This was pursuant to the letter written by Patwari (PW7) dated 13th June 1979. This arrest is also recorded by way of General Diary Entry (Ex. Ka. 8) dated 13th June 1979. According to this report, Bhagi Ram (Appellant) was

arrested at 7:20 p.m. on 13th June 1979. The description of his clothes is also mentioned in the report (Ex. Ka. 8). According to Ex. Ka. 8, there were blood-stains on the shirt and paijama of the appellant, which were got removed and put in a potli. The arrest was made at Jhulaghat Check Out Post on behalf of the I.O. on 13th June 1979 at 7:20 p.m. and in the early morning on the next day i.e. 14th June 1979, the appellant was handed over to Shri Gopi Ram, the I.O. (PW7), who had come to Jhulaghat. The post-mortem was carried out on 15th June 1979 by Dr. B.S. Bist (PW4), Medical Officer, District Hospital, Pithoragarh.

The post-mortem report (Ex. Ka. 5, wrongly marked as Ex. Ka. 6) revealed the following:-

1. Incised wound 6 c.m. x 4 c.m. deep cutting muscles longarteris on the fight outer side of the neck wound is oblique 2 c.m. above the right clavicle Clotted blood present.
2. Inclined wound 6 c.m. x 3 c.m. muscles deep on the right side of the face extending from 1 c.m. right angle of mouth towards angle of the mandible clotted blood present. Direction transverse.
3. Incised wound 6 c.m. x 1.5 c.m. vertical word, muscle and bone deep on the right outer side of the face 2 c.m. in front of the right ear. Brain matter coming out of the wound.
4. Incised wound 6 c.m. x 1.5 c.m. muscle deep on the right side of the neck 4 c.m. behind right ear. Direction transverse.
5. Lacerated and abreased wound in the area of 6 c.m. x 2 c.m. on the back towards left lateral side (left flank).

The accused, Bhagi Ram was produced before the Magistrate within 24 hours. Bhagi Ram (Appellant) was interrogated by the I.O. (PW7). In the presence of the I.O. (PW7) and in the presence of Gopal Datt (PW2), the appellant made statement under section 27 of the Evidence Act, which led to the discovery of axe in the bamboo bushes near the road and the same was attached under Ex. Ka. 3. The

report of the Serologist (Ex. Ka. 21) confirmed that the axe had blood-stains. In his evidence, Dr. Bist (PW4) confirmed that the axe could have caused the above injuries.

The investigation in this case was conducted by Shri Gopi Ram (PW7). He was the I.O. The accused, Bhagi Ram (Appellant) was charge-sheeted on 24th July 1979 vide Ex. Ka. 19. After the accused came to be charge-sheeted, the concerned Magistrate, after holding inquiry, committed the accused to the Session's Judge, Pithoragarh. On 23rd July 1980 charges were framed by the Court below under section 302 I.P.C. against Bhagi Ram (Appellant herein). The charges were read-over and explained to Bhagi Ram (Appellant) in Hindi, who pleaded not guilty. Bhagi Ram (Appellant) had to face the trial. As stated above, the Session's Judge, Pithoragarh convicted Bhagi Ram (Appellant) for committing offence punishable under section 302 I.P.C. of intentionally causing the death of Mahdvi Devi on 13th June 1979 between 10 & 11 a.m. in Village Doli, Patti Nayadesh, District Pithoragarh. He has been sentenced to undergo life imprisonment. In his statement under section 313, Bhagi Ram (Appellant) had denied the case of the prosecution. He has pleaded not guilty, however, he has admitted that the deceased Madhvi Devi was in her maika on 13th June 1979 in village Doli.

3. We have received the report from the concerned C.J.M., who was directed to made inquiries with the jail authorities, to the effect that for the last two years, Bhagi Ram (Appellant), who was in jail, has absconded. We appointed Mr. Mishra as amicus curiae to argue the case on behalf of Bhagi Ram (Appellant).

4. Accordingly, we heard Mr. Mishra, learned amicus curiae for the appellant and Shri S.P.S. Panwar, learned Government Advocate for the State.

5. The prosecution examined seven witnesses in support of its case apart from relaying on documentary evidence. We have

considered the evidence on record, the circumstances and probabilities of the case.

FINDINGS

6. Mr. Mishra, learned amicus curiae appearing on behalf of Bhagi Ram (Appellant) contended that the F.I.R. (Ex. Ka. 10) lodged by Govind Ram (PW5), uncle of the appellant, was not proved. In this connection, it was argued that Govind Ram (PW5) disowned the F.I.R. (Ex. Ka. 10). That Govind Ram (PW5) in his evidence has deposed that the contents of Ex. Ka. 10 were not written by him. That they were not in his hand-writing. That the signature was in his hand-writing, but not the contents. It was, therefore, argued that the F.I.R. (Ex. Ka. 10) was fabricated. He contended that if the F.I.R. (Ex. Ka. 10) is found to be fabricated, then the entire case of the prosecution falls. In this connection, he relied upon the judgment of the Supreme Court in the case of Madudanal Augusti V/s State of Kerala reported in (1980) 4 SCC 425. In this connection, he further added that Govind Ram (PW5) has been declared hostile. He further contended that Govind Ram (PW5) has nowhere indicated in his evidence that Bhagi Ram (Appellant) had struck Madhvi Devi with an axe. That in his evidence, Govind Ram (PW5) has only stated that he was the uncle of Bhagi Ram (Appellant). That on 13th June 1979, between 2 & 3 p.m., the Sabhapati, Gopal Datt (PW2) came to Govind Ram (PW5) and stated that in village Doli, there was a murder and that the Sabhapati (PW2) had asked Govind Ram (PW5) to report the incident to the I.O. (PW7), which he did. According to the learned Advocate, the evidence of Govind Ram (PW5) was silent about who was the person who injured Madhvi Devi. That even the name of Madhvi Devi is not mentioned in the evidence of Govind Ram (PW5) and therefore, a doubt is created regarding the story of the prosecution.

We do not find any merit in these arguments. The incident took place on 13th June 1979 between 10 & 11 a.m. The tehrir (part of Ex. Ka. 10) is all comprehensive. The said tehrir was admittedly signed PW5. It clearly describes the incident dated 13th June 1979 between

10 & 11 a.m. The tehrir unequivocally states that Bhagi Ram was the nephew of Govind Ram (PW5). That on 13th June 1979 Bhagi Ram had struck Madhvi Devi, his step-mother with a *Kulahri* and had killed her. That the incident was witnessed by Kuri Deiv (PW1), aunty of Bhagi Ram and that the dead body of Madhvi Devi was lying in the courtyard of Rami Ram, the father of Bhagi Ram. Further, the Lower Court examined the tehrir (part of Ex. Ka. 10) and found that the signature of Govind Ram (PW5) and the contents thereof were in the same hand-writing. We also examined it and found that the hand-writing in the contents of the tehrir and the hand-writing in the signature appended to the tehrir is the same. Hence, it cannot be said that the said tehrir is fabricated. Moreover, the chik F.I.R. (Ex. Ka. 10) was registered by the I.O. (PW7) on the same day around 4:30 p.m. Further, the Inquest Report dated 13th June 1979 (Ex. Ka. 1) has been proved by Gopal Datt, Sabhapati (PW2). It was made by the I.O., Gopi Ram (PW7) between 6:15 p.m. & 7:45 p.m. on 13th June 1979. Inquest Report (Ex. Ka. 1) is also all comprehensive. It refers to the chick F.I.R. (Ex.Ka.10) dated 13th June 1979. It shows that the F.I.R. was lodged before the preparation of the Inquest Report (Ex. Ka. 1). This Inquest Report (Ex. Ka. 1) refers to the information given by Govind Ram (PW5), uncle of the appellant. It refers to the contents of the tehrir in entirely. Therefore, Ex. Ka. 10 was not an after thought as alleged. Further, the letter dated 13th June 1979 addressed by the I.O. (PW7) Gopi Ram to the C.P.O., Jhulaghat (Ex. Ka. 6) was an intimation passed on by the I.O. (PW7) to the C.P.O., Jhulaghat that one Bhagi Ram, s/o Rami Ram, Village Doli had murdered his step-mother Madhvi Devi and had fled. That he was likely to leave India through Indo-Nepal border via Jhulaghat. By the said letter (Ex. Ka. 6), C.P.O. Jhulaghat was requested to arrest Bhagi Ram. This letter, therefore, shows that chik F.I.R. (Ex. Ka. 10) was not an after thought. That it was not fabricated. That the chik F.I.R. (Ex. Ka. 10) is supported by the Tehrir (part of Ex. Ka. 10), the Inquest Report (Ex. Ka. 1) and also by the letter, which the I.O. (PW7) wrote to the C.P.O. Jhulaghat dated 13th June 1979. It is

important to note that the said letter dated 13th June 1979 specifically gives the Crime No., the name of the accused and the name of the deceased. Further, Jagdish Prasad (PW6), C.PO. at Jhulaghat had deposed having received the said letter from Gopi Ram, I.O. (PW7). Further, Ex. Ka. 8, dated 13th June 1979 is the G.D. It indicates the arrest of the accused on 13th June 1979 with blood stained clothes subsequently removed and kept in a potli. It indicates that the arrest was made by two Police Constables Chattur Singh and Siya Ram at Jhulaghat. It indicates that he was detained at Jhulaghat on 13th June 1979 at 7:20 p.m. Further, the evidence of Jagdish Prasad (PW6) shows that the appellant was arrested as per Ex. Ka. 6. Jagdish Prasad (PW6) was not connected with the case. There is no reason to disbelieve Jagdish Prasad (PW6). Lastly, the tehrir has been proved by I.O. (PW7). It supports the evidence of PW1. All these circumstances show that the F.I.R. (Ex. Ka. 10) was genuine and not an after thought. Further, the recovery of blood-stained mud and clean mud was made on 13th June 1979 by the I.O. (PW7) in the presence of the Sabhapati Shri Gopal Datt (PW2) vide Ex. Ka. 4. In this case, there is no challenge to the place of occurrence. The site plan (Ex. Ka. 15) was prepared by the I.O. (PW7). It indicates the courtyard, where the body of the deceased was lying. It indicates the place from where the axe was recovered. Further, Ex. Ka. 21, being the report of the Chemical Examiner, also indicates the recovery of blood-tainted mud clothes from the site. Further, the recovery of blood-stained Axe (Ex. Ka. 3) is also proved by the I.O. (PW7) and Sabhapati (PW2). The blood stained axe was recovered on 14th June 1979 by the I.O. under section 27 of the Evidence Act. Further, Ex. Ka. 21 indicated that the axe had blood-stains. The evidence of Dr. Bist (PW4) confirmed that an axe could have caused above injuries. PW4 has confirmed that the axe could have been the weapon of assault. Under the above circumstances, there is no merit in the argument that the F.I.R. (Ex. Ka. 10) was fabricated and an after thought.

7. Learned Advocate for the appellant next contended that the entire case of the prosecution revolves around the testimony of single eye-witness Kuri Devi (PW1). That she was 72 years old when she gave her testimony before the Court. That she was declared hostile by the Court. That the alleged motive of the deceased repeatedly calling upon Bhagi Ram (Appellant) to reimburse the marriage expenses was insufficient to link the accused with the crime. That in her evidence, Kuri Devi (PW1) has stated that she did not witness the incident. That she had gone to Bata Tok, to scare away the monkeys, from where she could not see the place of occurrence. That on her way back she saw the deceased in the courtyard of Rami Ram. It was further argued on behalf of the appellant that after she was declared hostile, Kuri Devi (PW1) when cross-examined by the prosecution, deposed that she had seen the incident and therefore, her testimony was not reliable. It was further argued that according to Kuri Devi (PW1) the injury was caused by the blunt side of the axe, which testimony is contrary to post-mortem report (Ex. Ka. 5) which categorically refers to incised wounds and therefore, the testimony of Kuri Devi (PW1) was contradictory to the post-mortem report (Ex. Ka. 5). In this connection, reliance was also placed on the evidence of Dr. Bist (PW4) who had deposed that the injuries could not have taken place by use of axe from the blunt side. It was further argued that in this case the report of the Chemical Examiner was not positive. That the blood stains on the axe and the clothes had no matching blood group. Hence, there was no evidence to connect the axe with the blood of the dead. For all the above reasons, it was argued that the testimony of the sole eye-witness was not fully reliable and therefore, should be discarded.

We do not find any merit in these arguments. In the case of Khujji alias Surendra Tiwari V/s State of M.P. reported in Judgment Today 1991 (3) Supreme Court 151, it has been held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution decided to treat him as hostile and cross-examined him. That evidence of such witnesses cannot be treated as effaced or

washed off the record altogether. That the same can be accepted to the extent of the version being found dependable on the careful scrutiny thereof. This judgment applies to the facts of this case. PW1 was declared hostile only during her cross-examination. Before she was declared hostile, Kuri Devi (PW1), in her examination-in-chief, had stated that Bhagi Ram was her brother's son. That the incident had taken place more than a year ago. That the incident had taken place at 10 a.m. in the morning. That Bhagi Ram had struck the deceased with an axe. The Madhvi Devi was murdered with an axe by Bhagi Ram. That Madhvi Devi was the step-mother of Bhagi Ram. That having murdered Madhvi Devi, Bhagi Ram had fled with the axe. That Bhagi Ram was living separately from his step-mother. That his marriage expenses were borne by Madhvi Devi. That his marriage was arranged by the deceased, Madhvi Devi. That Madhvi Devi used to seek reimbursement from Bhagi Ram, which had strained their relationship. Kuri Devi (PW1) was 72 years old when she was examined in Court. She was the aunty of appellant. The appellant was her brother's son. Madhvi Devi was the step mother of the appellant. Kuri Devi (PW1) being the aunt of the appellant was trying to save her nephew. She was deposing after one year three months. Madhvi Devi had died. if the accused, Bhagi Ram was sentenced, the family of Kuri Devi (PW1) was the looser. Under such circumstances, she became hostile. She was trying to save the appellant, who had, in fact, requested her to save him. In his connection, it is important to note the testimony of Kuri Devi (PW1) after she was declared hostile. When she was cross-examined by the prosecution, she has stated the Bhagi Ram had told her to save him. After one year and three months Kuri Devi (PW1), being the aunt of the appellant was moved by the request made by her nephew. In the circumstances, she became hostile. However, as held by the Supreme Court in the above judgment, the evidence of the prosecution witnesses cannot be rejected in toto. If one reads the evidence of PW1 before she was declared hostile and even her evidence on cross-examination by the prosecution, it is clear that she was an eye-witness

to the incident as stated above. In this case, the place of occurrence is not disputed. In the above circumstances, her version, to the extent of her seeing the incident on 13th June 1979 at 10 a.m. of Bhagi Ram striking his step-mother Madhvi Devi with an axe and subsequently running away with it, cannot be disbelieved. Her evidence on this principal fact is corroborated by the chik F.I.R. & the tehrir (Ex. Ka. 10), the Inquest Report (Ex. Ka. 1), the recovery of the axe (Ex. Ka. 3), the report of the Serologist (Ex. Ka. 21) and the evidence of Dr. Bist (PW4) who did the post mortem and who confirmed that the injuries could have been caused by the axe (Ex. Ka. 3). In the circumstances, the testimony of Kuri Devi (PW1) has been fully corroborated. Hence, there is no reason to disbelieve PW1. In the case of Khujji alias Surendra Tiwari V/s State of Madhya Pradesh reported in Judgment Today 1991(3) Supreme Court 151, it has been held that in cases where the appellant fails to explain the presence of human blood on his clothes, it is a circumstance, which goes against the appellant. Similarly, the discovery of the axe from the bamboo bushes and the inability to explain the presence the blood thereon is a circumstance against the appellant. In the present case, the find of human blood on the axe and the clothes of the appellant also lends corroboration to the testimony of PW1 when she stated that she had seen the appellant inflicting the blow on the deceased with the axe.

8. It was next contended by the learned Advocate for the appellant that Gopal Datt, Sabhapati (PW2) had deposed in his evidence that on 14th June 1979, Bhagi Ram was questioned by the I.O. (PW7). That on 14th June 1979, on being questioned, Bhagi Ram took the I.O. (PW7) and the Sabhapati, Gopal Datt (PW2) with others to the site from where the axe was recovered from the bushes. That on their way back they came to the courtyard of Rami Ram, where the body of the deceased. Madhvi Devi was lying. Learned Advocate for the appellant contended that according to the evidence of the I.O. (PW7) the inquest was completed on 13th June 1979. That if the body was sealed on 13th June 1979 one fails to understand as to how on 14th

June 1979, after the recovery of the axe, PW2 had returned to the courtyard, where the body of the deceased lay. Therefore, the testimony of Gopal Datt (PW2) cannot be believed.

We do not find any merit in these arguments. The argument is based on mis-reading of the evidence. In his examination-in-chief, Gopal Datt (PW2) has stated that on 13th June 1979, the I.O. (PW7) had come to village Doli in connection with the murder of Madhvi Devi. That Gopal Datt (PW2) was made in a Panch to the Inquest Report (Ex. Ka. 1). That in his presence, the blood-stained mud was collected from the said courtyard. According to PW2, Bhagi Ram was interrogated on 14th June 1979 and pursuant to his statement, the I.O. (PW7) along with PW2 and others went to the side from where the axe was recovered. That the house of Rami Ram was located on the way to the said site (see Ex. Ka. 15). In his evidence, Gopal Datt (PW2) has stated that they went to the said site via the courtyard, where on the previous day, the body of Madhvi Devi lay. There is no cross-examination to show that PW2 had gone through some other side. Therefore, there is no merit in the connection on behalf of the appellant that the testimony of Gopal Datt (PW2) was unreliable. Further the axe was hidden in the thick shadowy bamboo bushes besides the road from where it was recovered by the police under section 27 of the Evidence Act.

9. Learned Advocate for the appellant next contended that Kishan Ram (PW3) was the step-brother of the appellant. That he was the real son of Madhavi Devi. That there was no reason for him to resort to falsehood. That he need not be disbelieved. That according to Kishan Ram (PW3), Kuri Devi (PW1) had told him about the death of Madhvi Devi at between 2 & 3 p.m. on 13th June 1979. That according to Kishan Ram (PW3), Kuri Devi (PW1) did not tell him that Madhvi Devi was killed by Bhagi Ram. That the evidence of Kishan Ram (PW3) was contradictory to the evidence of Kuri Devi (PW1) as far as the time of the occurrence is concerned.

We do not find any merit in these arguments. Firstly, Kishan Ram (PW3) was the step-brother of Bhagi Ram (Appellant). He was 17 years old when he gave evidence before the Court. He was around 15½ years when the incident took place on 13th June 1979. Secondly, the evidence of Kishan Ram (PW3) only states that around 2 p.m. he was informed by Kuri Devi (PW1) about the murder of his mother Madhvi Devi. Kishan Ram (PW3) was not an eye-witness. Thirdly, even the evidence of Kishan Ram (PW3) supports the evidence of Kuri Devi (PW1) when he states that quarrel used to take place between the deceased and Bhagi Ram as the deceased used to pester him to return her dues incurred as marriage expenses and to this extent PW3 has supported PW1.

10. Learned Advocate for the appellant next contended that Jagdish Prasad (PW6), Head Constable at Jhulaghat check outpost has deposed in his evidence that the appellant was arrested on 13th June 1979 at 7:20 p.m. and that the appellant was handed-over to the I.O. (PW7) on 14th June 1979 at 6:30 a.m. He contended that one fails to understand as to under whose directions Jagdish Prasad (PW6) had arrested Bhagi Ram and under whose orders the I.O. (PW7) took the custody of Bhagi Ram from Jagdish Prasad (PW6). That in the circumstances, the arrest of Bhagi Ram was doubtful and if his arrest was doubtful, the recovery of the clothes in the potli referred to in the evidence of PW7 was doubtful.

We do not find any merit in these arguments. On 13th June 1979, a letter was addressed by the I.O. (PW7) to C.P.O. Jhulaghat. By that letter, the I.O. (PW7) had requested the C.P.O. Jhulaghat to arrest Bhagi Ram. That letter indicates that name of the accused, the crime number. That letter was received by Jagdhish Prasad (PW6) as confirmed in his evidence. Further Ex. Ka. 8 is the entry in the General Dairy at Jhulaghat, which also refers to the letter dated 13th June 1979 and which indicates that the arrest was made at Jhulaghat on behalf of the I.O. (PW7). Ex. Ka. 8 also refers to arrest of the

appellant on 13th June 1979 with blood stained clothes. Hence the arrest on 13th June 1979 at Jhulaghat was on behalf of the I.O.

11. Mr. Mishra, learned Advocate for the appellant next contended that in this case Govind Ram (PW5), the informant, has denied the contents of the Tehrir (part of Ex. Ka. 10) and, therefore it was argued that he I.O.'s evidence was not reliable.

We do not find any merit in this argument. Firstly, as stated above, Govind Ram (PW5) has admitted that the signature on the Tehrir (part of Ex. Ka. 10) was in his hand. The handwriting in the signature tallies with the handwriting in the contents of the Tehrir (part of Ex. Ka. 10). Secondly, in his evidence, the I.O. (PW7) has maintained that the Tehrir (part of Ex. Ka. 7) was given to him by Govind Ram (PW5) who is declared hostile. Govind Ram (PW5) was the uncle of the appellant. As discussed, hereinabove, we are inclined to accept the evidence of the I.O. (PW7) who has maintained that the Tehrir (part of Ex. Ka. 10) was given to him by Govind Ram (PW5), which was entirely written by Govind Ram (PW5) on 13th June 1979 and submitted to him. Further, the I.O. (PW7) had prepared the Inquest Report (Ex. Ka. 1) in extensio and which recites in entirely the contents of the Tehrir. It is hard to believe that the entire Inquest Report was the figment of the I.O.'s imagination. Therefore, it is clear that on account of blood-affinity with the appellant, Govind Ram (PW5) has denied writing the contents of the Tehrir.

12. Learned Advocate for the appellant next contended that Kuri Devi (PW1) in her further examination by the defence has testified that Bhagi Ram had struck Madhvi Devi with the blunt side of the Axe. Which is contradictory to the evidence of Dr. Bist (PW4), who has stated that the injuries could not have been caused by the blunt side. It was, therefore, argued that the medical evidence did not support the oral testimony of Kuri Devi (PW1).

We do not find any merit in this argument. Firstly, Kuri Devi (PW1) as stated about the blunt side of the axe only after being declared hostile and that too, in the further cross-examination by the

defence. Secondly, the evidence of Dr. Bisht unequivocally states that the injuries were capable of being caused by an axe like the axe in the present case. Lastly, the report of Serologist (Ex. Ka. 21) has confirmed that the axe had blood stains. In the circumstances, there is no merit in the above argument advanced on behalf of the appellant.

Under the above circumstances, this case falls under Clause Thirdly to Section 300 I.P.C. and the substantive charge under section 302 I.P.C. is proved beyond reasonable doubt against Bhagi Ram (Appellant).

Before concluding this Court would like to place on record its application for the labour put in by the learned Advocate Shri Mishra, who was appointed amicus curiae to argue for appellant. He shall be paid fees as per the scale prescribed.

Accordingly, we pass the following Order:

ORDER

Appeal stands dismissed.

The conviction and sentence of life imprisonment on Bhagi Ram, appellant herein, for offence punishable under section 302 I.P.C. is upheld.

The appellant is absconding from the Sitarganj jail.

Let copy of this judgment and order along with the record of the case be sent to the Court below for compliance. It will submit the compliance report within two months from the date of the receipt of the record.

(Irshad Hussain, J.) **(S.H. Kapadia, C.J.)**

Gur